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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM**

NANYA TECHNOLOGY CORP. and
NANYA TECHNOLOGY CORP. U.S.A

Plaintiff,

-v-

FUJITSU LIMITED, FUJITSU
MICROELECTRONICS AMERICA, INC.,

Defendants.

CIVIL CASE NO. 06-CV-00025

**LR 37.1 STIPULATION CONCERNING
FMA'S MOTION TO COMPEL
IMMEDIATE SUBSTANTIVE
RESPONSES TO FMA'S
JURISDICTIONAL DISCOVERY
REQUESTS**

ORAL ARGUMENT CONTESTED

I. INTRODUCTION

Pursuant to Local Rule 37.1, Defendant Fujitsu Microelectronics America, Inc.

(FMA) and Plaintiffs Nanya Technology Corporation and Nanya Technology Corporation U.S.A.

hereby submit the following Joint Stipulation Concerning FMA' Motion to Compel Immediate

FILED
DISTRICT COURT OF GUAM

MAY - 1 2007

MARY L.M. MORAN
CLERK OF COURT

1 Substantive Responses to FMA's Jurisdictional Discovery Requests. FMA respectfully asks the
 2 Court to compel Plaintiffs to immediately produce substantive responses the following FMA
 3 jurisdictional discovery requests:

- 4 1. Fujitsu Microelectronics America, Inc.'s ("FMA") First Set of
 5 Interrogatories (Nos. 1-6);
- 6 2. FMA's First Set of Requests for Production (Nos. 1-29);
- 7 3. FMA's First Set of Requests for Admissions (Nos. 1-34) on Plaintiff Nanya
 8 Technology Corporation U.S.A.; and
- 9 4. FMA's First Set of Requests for Admissions (Nos. 1-34) on Plaintiff Nanya
 10 Technology Corporation (collectively "FMA's jurisdictional discovery
 requests").

11 **II. FMA'S GENERAL CONTENTIONS AND POINTS OF AUTHORITY**

12 **A. FMA's Position**

13 Plaintiffs have served no substantive response to FMA's jurisdictional discovery
 14 requests, instead objecting and refusing to provide any information responsive to the requests until
 15 "Defendants serve their Local Rule 26.2 pre-discovery disclosures or on May 15, 2007 (concurrent
 16 with the filing of Plaintiffs' Response)...." This is gamesmanship.

17 The parties stipulated back in February that jurisdictional discovery could proceed
 18 (Dkt. No. 148), and the Court has ruled that the disclosures by Defendants are not yet due. In light
 19 of the impending briefing on FMA's Motions to Dismiss or Transfer, the obvious purpose of
 20 Plaintiffs' refusal to provide any response at all to FMA's requests is to prejudice FMA's ability to
 21 prepare its arguments for its motions to dismiss. While FMA and its co-defendant Fujitsu Limited
 22 have responded to hundreds of documents requests (producing already in excess of 118,000 pages
 23 of documents), almost one hundred fifty total interrogatories, and another fifty total requests for
 24 admission (and provided deponents as well), Plaintiffs are now refusing to give FMA any kind of
 25 jurisdictional discovery at all.
 26

1 FMA is substantively and severely prejudiced by Plaintiffs' improper withholding
2 of discovery that has turned jurisdictional discovery into a one-way street. Accordingly, FMA
3 asks that production be compelled immediately.

4 **1. Statement of Facts**

5 FMA first filed a Motion to Dismiss or Transfer on December 5, 2006. Although
6 FMA sought a prompt hearing at that time, in order to accommodate Plaintiffs' demand for
7 jurisdictional discovery (which the Court granted), a hearing was set upon stipulation of the parties
8 and Order of the Court and then extended to June 22, 2007.

9 Since then, Defendants have been more than cooperative with Plaintiffs'
10 jurisdictional discovery requests. Defendants have produced in excess of 118,000 pages
11 responsive to over 350 separate jurisdictional document requests from Plaintiffs and have provided
12 answers and responses to Plaintiffs' 154 interrogatories and 54 requests for admission. Due to the
13 extraordinarily burdensome number and scope of Plaintiffs' requests, Defendants are continuing to
14 actively collect and produce information on a rolling basis.

15 On March 23, 2007, FMA served its first sets of discovery requests narrowly
16 tailored to the personal jurisdiction issue. These requests sought, among other things, the "alleged
17 basis of jurisdiction over FMA under Section 12 of the Clayton Act" in Plaintiffs' complaint and
18 their "basis for alleging infringement against FMA" "under a stream of commerce theory of
19 specific jurisdiction." *See* Interrogatory No. 1, quoted above.

20 However, in their objections to FMA on April 23, 2007, Plaintiffs declined to
21 answer a single interrogatory. Plaintiffs also refused to substantively respond to any request for
22 admission (RFA) or produce documents responsive to any request for production (RFP). Plaintiffs
23 claimed to be under no obligation to respond to any of FMA's interrogatories and requests because
24 FMA has not made any pre-discovery disclosures (which are not yet due, pursuant to the Court's
25
26

1 Order). Plaintiffs also indicated that they intend to withhold answers to the interrogatories and
2 documents responsive to the RFPs until the filing of Plaintiffs' Response in Opposition to Fujitsu
3 Microelectronics America, Inc.'s Motion to Dismiss or Transfer to the Northern District of
4 California and for a More Definite Statement ("Response to Defendant's Motion to Dismiss or
5 Transfer"), which is due on May 15, 2007.

6
7 On April 24, FMA wrote to Plaintiffs with respect to their deficient responses. (*See*
8 Ex. A). FMA explained that neither the dates for serving initial disclosures nor for filing
9 Plaintiffs' Response to Defendant's Motion to Dismiss or Transfer tolls or otherwise delays
10 Plaintiffs' obligation to provide substantive answers to Defendants' jurisdictional interrogatories or
11 RFAs, or to produce responsive documents. FMA insisted that to the extent that Plaintiffs now
12 have answers and responsive documents, they should be provided immediately. FMA explained
13 that it was Plaintiffs who sought and received the current period of jurisdictional discovery and this
14 period is not a one-sided discovery phase. FMA pointed out that Defendants have produced in
15 excess of 118,000 pages of documents responsive to Plaintiffs' jurisdictional discovery requests
16 and Plaintiffs have yet to produce any documents responsive to Defendants' jurisdictional
17 discovery requests. FMA requested that Plaintiffs immediately provide substantive answers to
18 FMA's interrogatories and RFAs, and begin rolling production of documents responsive to its
19 RFPs one week from FMA's letter, *i.e.*, on May 1, with completion of rolling production one week
20 after that, *i.e.*, on May 8. (*Id.*)

21
22
23 With regard to both sets of responses to the RFAs, Plaintiffs further objected in
24 every response that each request seeks information irrelevant to any claim or defense in the case.
25 (*Id.*) FMA pointed out that such an allegation is false and an egregious violation of the Federal
26 Rules of Civil Procedure. FMA explained that the information sought is entirely appropriate and
in fact is analogous to the very information sought by Plaintiffs' own jurisdictional discovery

1 requests. Thus, for each request, FMA asked Plaintiffs to immediately provide answers responsive
2 to the RFAs. (*Id.*)

3 FMA sought a meet and confer which resulted in a teleconference on April 25,
4 2007. During that meet and confer, Plaintiffs purported to offer a proposal to provide substantive
5 responses to Defendants' discovery requests within 10 days after Defendants serve their pre-
6 discovery disclosures. However, Plaintiffs refused to explain or elaborate upon their position
7 despite FMA's numerous inquiries. Instead, Plaintiffs assured FMA that they would elaborate in
8 writing. Yet Plaintiffs' follow-up letter later that day still did not address FMA's inquiries, as
9 explained in FMA's responsive letter the following day. (*See* Ex. B).

11 For example, Plaintiffs' April 25 letter did not address whether, why or how the
12 content of any Rule 26(a)(1) disclosures from FMA under Plaintiffs' proposal would affect
13 whether Plaintiffs would provide full responses to FMA's discovery requests. (*Id.*) Accordingly,
14 in its responsive letter on April 25, FMA posed the following questions, which FMA had originally
15 posed during the meet and confer and which Plaintiffs had failed to address in their letter:
16

17 If the content of the disclosures would not affect Nanya's obligation to
18 provide full responses, then why does Nanya need 10 days? If Nanya
19 envisions that the content of FMA's disclosures may affect Nanya's
20 obligation to provide full responses, then what is to prevent Nanya from
simply deeming FMA's disclosures insufficient under its own subjective and
biased "standards" and thereby avoid discovery?

21 (*See* Ex. C). FMA explained that Nanya's refusal to answer these and other legitimate questions
22 (posed repeatedly in the meet and confer teleconference) demonstrated that Nanya's proposal is
23 illusory and improper. FMA also noted that it already provided initial disclosures in the Northern
24 District of California case, *Fujitsu Limited and Fujitsu Microelectronics America, Inc. v. Nanya*
25 *Technology Corp. and Nanya Technology Corp. U.S.A.*, Case No. 4:06-cv-06613 (CW). (*Id.*)

26 Plaintiffs responded by letter on April 26, 2007. (*See* Ex. D). Their letter is notable
in that Plaintiffs again failed to respond to FMA's inquiries or to acknowledge that FMA had

1 already provided its initial disclosures in the Northern District of California. The letter also cited
 2 Local Rule 26.2, but FMA's April 25 letter had already fully explained why Plaintiffs' attempt to
 3 hide behind Local Rule 26.2 was improper, *i.e.*, that the Court allowed Defendants to make their
 4 L.R. 26.2 sixty (60) days after the entry of the Scheduling Order on May 4, 2007 without
 5 restricting Defendants' rights to take jurisdictional discovery. (FMA's position on this and
 6 Plaintiffs' other objections are explained in detail below.) Accordingly, Plaintiffs' April 26 letter
 7 did not advance resolution of the issue, and therefore FMA sent its Rule 37.1 stipulation to
 8 Defendants on April 26, 2007.

10 **2. Plaintiffs' Improper Objections and FMA's Contentions**

11 **a. Plaintiffs' First Improper Objection and FMA's** 12 **Contentions**

13 Plaintiffs assert the following objection, which FMA challenges:

14 *Plaintiffs are "under no obligation whatsoever to respond" because*
 15 *"no pre-discovery disclosures have been made".*

16 *See generally* Plaintiffs' Objections and Responses to Fujitsu Microelectronics America, Inc.'s
 17 First Set of Interrogatories (Nos. 1-6), April 23, 2007 (Ex. I); *see also generally* Plaintiffs'
 18 Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Requests for
 19 Production (Nos. 1-29), April 23, 2007 (Ex. J); Plaintiff Nanya Technology Corporation's
 20 Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Requests for
 21 Admissions (Nos. 1-34), April 23, 2007 (Ex. K); Plaintiff Nanya Technology Corporation U.S.A.'s
 22 Objections and Responses to Fujitsu Microelectronics America, Inc.'s First Set of Requests for
 23 Admissions (Nos. 1-34), April 23, 2007 (Ex. L). Plaintiffs assert essentially the same objection
 24 repeatedly in the current stipulations.

25 Plaintiffs' objection that they are "under no obligation whatsoever to respond"
 26 before FMA has not yet served pre-discovery disclosures according to L.R. 26.2 is an improper

1 attempt to evade discovery obligations and to deny Defendants an equal opportunity to mount their
2 jurisdictional case.

3 Pursuant to the March 5, 2007 Discovery Plan (Dkt. No. 171), Defendants'
4 disclosures pursuant to Fed. R. Civ. P. 26(a)(1) and L.R. 26.2 are due sixty (60) days after the
5 entry of the Scheduling Order, which is on May 4, 2007. Accordingly, FMA's L.R. 26.2
6 disclosures are not yet due. The fact that they are not yet due and thus have not been served does
7 not excuse Plaintiffs from participating in jurisdictional discovery. The same Discovery Plan,
8 which both parties approved on February 16, 2007, discussed discovery procedures with respect to
9 both parties and never suggested that jurisdictional discovery would be one-sided, as Plaintiffs
10 now insist. *Id.*; *see also generally* March 2 Tr. (Ex. E). Nor did that order otherwise restrict
11 Defendants' jurisdictional discovery options. It was Plaintiffs who sought and received the current
12 period of jurisdictional discovery, and it is highly improper for Plaintiffs to stonewall Defendants'
13 legitimate discovery requests during that court-ordered jurisdictional discovery period.

14 Moreover, as explained above, FMA has already served pre-discovery disclosures
15 in the California case. Any disclosures in Guam would be essentially redundant. Plaintiffs'
16 purported concern (and proposal) was therefore disingenuous in light of the fact that they already
17 have this information in their possession. In fact, during the March 2 hearing that led to the
18 Discovery Plan, counsel for FMA explained as much to the Court and Plaintiffs did not contest it.
19 *See* March 2 Tr. (Ex. E) at 77. Counsel explained the reason for not making the disclosures was
20 that "just procedurally in this case, it's difficult to make the formal disclosures because we don't
21 know exactly what the counterclaims are going to be yet, or whether the parties are going to be in
22 this case yet." (*Id.*) Plaintiffs nevertheless pressed for the disclosures and suggested that
23 Defendants could amend upon receiving Plaintiffs' counterclaims. (*Id.* at 77-78). The Court then
24 compromised and made the disclosures due in 60 days with leave to amend following receipt of
25
26

1 Plaintiffs' counterclaims. (*Id.* at 78-79). Notably, ***Plaintiffs never suggested or implied that they***
 2 ***would refuse to participate in jurisdictional discovery until after those requests were served,***
 3 despite the fact that jurisdictional discovery was discussed throughout the hearing. Nor did
 4 Plaintiffs alert Defendants to that position when they received Defendants' discovery requests.

5 It is also worth noting Plaintiffs' double standards. Plaintiffs served their first set of
 6 jurisdictional requests on FMA on December 14, 2006 -- ***well before it served its own Rule 26.2***
 7 ***disclosures on January 9.*** (See Exs. F, G). When FMA served its responses and objections on
 8 January 16, 2007, it objected *inter alia* on the grounds that the requests were premature because
 9 discovery had not yet commenced. (See Ex. H). Nanya immediately cried foul and FMA
 10 ultimately agreed to produce responsive jurisdictional documents on April 2 -- well before the
 11 briefing on its Motion to Dismiss or Transfer. In view of this history, it is truly remarkable that
 12 Defendants dare to withhold documents because FMA served its own jurisdictional requests before
 13 serving its Rule 26.2 disclosures, especially when Plaintiffs already have the same information in
 14 their possession from the California case.

15
 16
 17 **b. Plaintiffs' Second Improper Objection and FMA's**
 18 **Contentions**

19 Plaintiffs assert the following objection, which FMA challenges:

20 *Each jurisdictional discovery request is "premature because it seeks*
 21 *information that is the subject of Plaintiffs' Response" to*
Defendants' Motion to Dismiss or Transfer.

22 *See generally* Plaintiffs' Objections and Responses to Fujitsu Microelectronics America, Inc.'s
 23 First Set of Interrogatories (Nos. 1-6), April 23, 2007 (Ex. I); Plaintiffs' Objections and Responses
 24 to Fujitsu Microelectronics America, Inc.'s First Set of Requests for Production (Nos. 1-29), April
 25 23, 2007 (Ex. J). Plaintiffs assert essentially the same objection repeatedly in the current
 26 stipulations.

1 It is highly improper for Plaintiffs to withhold discoverable factual information on
 2 the basis that some or all of it may be used to support their opposition to FMA's Motion to
 3 Dismiss or Transfer. Plaintiffs' refusal to produce responsive information until they file their
 4 response in opposition to FMA's Motion to Dismiss or Transfer is essentially an admission of
 5 improper motive: Plaintiffs do not want to show their cards before they file the opposition to
 6 FMA's Motion. In other words, Plaintiffs essentially acknowledge that they are seeking to
 7 conduct trial / motion by ambush. Moreover, in view of the short time until the impending briefing
 8 dates, it appears that Plaintiffs are trying to accomplish their objective by *fait accompli*.¹

10 FMA is not seeking disclosure of privileged information.² The information sought
 11 by FMA is factual, non-privileged, information and documents that Plaintiffs could easily provide
 12 without risking waiver of privilege. The fact that the information may also be relevant to
 13 Plaintiffs' response is not grounds for withholding that information from FMA.³

15 This is yet another baseless attempt to delay or withhold production.

16 **c. Plaintiffs' Third Improper Objection and FMA's**
 17 **Contentions**

18 Plaintiffs assert the following objection, which FMA challenges:

19 *"[A]fter Defendants serve their Local Rule 26.2 pre-discovery*
 20 *disclosures or on May 15, 2007 (concurrent with the filing of*
 21 *Plaintiffs' Response), and will supplement this response seasonably*
 22 *after Defendants yield all requested jurisdictional discovery."*

23 *See generally* Plaintiffs' Objections and Responses to Fujitsu Microelectronics America, Inc.'s
 24 First Set of Interrogatories (Nos. 1-6), April 23, 2007 (Ex. I); Plaintiffs' Objections and Responses

25 ¹ If Plaintiffs succeed in these improper tactics, then FMA respectfully requests sanctions to punish
 26 and discourage recurrence. *See* Fed. R. Civ. Proc. 37(a)(4).

² This does not relieve Nanya from their duties to maintain a log of information for which privilege
 has been claimed along with the requested information associated therewith.

³ If Plaintiffs believe that certain information should be protected, it may, on a case-by-case basis,
 assert privilege in accordance with the Protective Order, which addresses how a party should
 properly handle privileged and protected information.

1 to Fujitsu Microelectronics America, Inc.'s First Set of Requests for Production (Nos. 1-29), April
 2 23, 2007 (Ex. J). Plaintiffs assert essentially the same objection repeatedly in the current
 3 stipulations.

4 By seeking to make their disclosure conditional upon Defendants' yielding "all
 5 jurisdictional discovery," Plaintiffs create a double-standard. Plaintiffs' approach -- essentially
 6 stating that "I won't disclose **anything** until I think you have disclosed **everything**" -- is a blatant
 7 violation of the Federal Rules and this Court's Orders, which contemplate mutual, simultaneous
 8 participation in discovery. Plaintiffs are unfairly attempting to obtain the full scope jurisdictional
 9 discovery from FMA while denying FMA **any** jurisdictional discovery in advance of the court-
 10 ordered briefing period.

11
 12 **d. Plaintiffs' Improper Relevance Objections and FMA's**
 13 **Contentions**

14 Plaintiffs also repeatedly object on relevance grounds. *See generally* Ex. I-K and
 15 current stipulation. Plaintiffs' refusal to cooperate in jurisdictional discovery on relevance grounds
 16 is particularly confounding in view of FMA's significantly fewer and narrower discovery requests
 17 that are targeted specifically at the bases for Plaintiffs' jurisdictional accusations. For example,
 18 Plaintiffs have asserted in their complaint that Defendants have placed "products into the stream of
 19 commerce with the intention that they would be available to people in the United States and the
 20 Territory of Guam." To support its accusations, Plaintiffs have sought a great deal of
 21 "jurisdictional discovery" relying on Federal Circuit case law for establishing personal
 22 jurisdiction.⁴ According to Federal Circuit case law, in order to establish personal jurisdiction, it
 23 must be shown that the accused infringer: 1) knowingly placed the accused infringing products
 24 into the stream of commerce; and 2) had a reasonable expectation of being subject to jurisdiction
 25
 26

⁴ Not only are FMA's jurisdictional discovery requests highly relevant, they are also consistent with the very case law that Nanya itself cites for justifying its own jurisdictional discovery

1 in the forum state. *Asahi Metal Indus. Co. v. Superior Court*, 480 U.S. 102 (1987); *Abuan v. Gen.*
 2 *Elec. Co.*, 735 F. Supp. 1479, 1486 (D. Guam 1990). Faced with the jurisdictional assertions in
 3 Plaintiffs' complaint, FMA requested information specifically addressing such subject matter,
 4 including Plaintiffs' basis for their jurisdictional accusations and targeted discovery relevant to
 5 Plaintiffs' assertion of personal jurisdiction over FMA. FMA is clearly entitled to discovery
 6 responsive to its reasonable and targeted requests.
 7

8 For example, Interrogatory No. 1 simply requests that for each alleged basis of
 9 jurisdiction over FMA that Plaintiffs alleges under Section 12 of the Clayton Act, they state each
 10 such basis, each fact supporting each basis, and identify evidence supporting each fact. This is
 11 representative of other interrogatories by FMA concerning Plaintiffs' assertions of jurisdiction.
 12 Considering Plaintiffs' assertions, there is no question that FMA's jurisdictional requests seek
 13 relevant discovery. In the current stipulation, Plaintiffs repeatedly make the following objection to
 14 some or all of each document request:
 15

- 16 • Plaintiffs object to this request because it seeks information not
 17 relevant to the jurisdictional issues before the Court. FED. R. CIV. P.
 18 26(b)(1). Specifically, part (c) of the request seeks discovery of
 19 information related to the merits of this case, and Plaintiffs are not
 required to respond to merits-discovery requests until thirty days
 after the hearing on Defendants' pending motions to dismiss or
 transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).

20 Plaintiffs provide no support for their allegations that such requests in part or in whole seek only
 21 "merits" based discovery. Even if FMA's requests may *also* be relevant to the merits of the case
 22 (which Plaintiffs have not demonstrated), Plaintiffs have completely failed to address the issue in
 23 withholding production, *i.e.*, whether FMA's requests are *irrelevant* to the jurisdictional issues
 24 before the Court. There can be no arguing for example that Plaintiffs' evidence for alleging
 25 personal jurisdiction under the Clayton Act, as sought by part (c) of the request above, is relevant
 26

as it specifically asks for evidence of Defendants' bases for asserting personal jurisdiction under the Clayton Act in those precise terms.

e. Plaintiffs' Remaining Improper Objections and FMA's Contentions

Plaintiffs also repeatedly make the following objections in the current stipulation:

- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

Such objections are not a proper basis for withholding all jurisdictional discovery even if certain objections may be appropriate for certain specific documents. *Of course* FMA does not expect Plaintiffs to serve documents not in their possession and which they may or may not receive from Defendants. FMA is clearly not asking for that. But, for example, Nanya purports to have its own *factual documents and information* about Defendants' alleged contacts with Guam and/or the alleged flow of Defendants' goods into Guam through a stream of commerce. For example, in their Amended Complaint, Plaintiffs allege that "[u]pon information and belief, a number of Fujitsu Ltd.'s subsidiary or affiliate companies regularly conduct business in the Territory of Guam, have offices or distribution centers in the Territory of Guam, and sell products to people and businesses in the Territory of Guam." Amended Complaint (Dkt. No. 24-1) ¶ 20. Defendants are not aware of such regular business conduct, offices, distribution centers, or other contacts, or that any of the Accused Devices have flowed into Guam through any stream of commerce, which in any event would be entirely unforeseeable. To the extent that Plaintiffs have any documents or information supporting their contentions to the contrary, such documents and information are

entirely discoverable and Plaintiffs should be compelled to immediately produce them.

1 **3. Defendants' Citation to *Commissariat A L'energie Atomique* is**
 2 **Inapt**

3 Plaintiffs cite to *Commissariat a L'Energie Atomique v. Chi Mei Optoelectronics*
 4 *Corp.*, 395 F.3d 1315, 1323 (Fed. Cir. 2005), for the proposition that jurisdictional discovery “does
 5 not extend to the defendant challenging jurisdiction.” However, *Commissariat* says no such thing.
 6 The Court in *Commissariat* addressed only the plaintiffs’ request for jurisdictional discovery. Its
 7 holding that the plaintiff was entitled to such discovery did not imply or suggest that the defendant
 8 should be denied mutual jurisdictional discovery.

9 **4. Conclusion and Request for Relief**

10 Plaintiffs’ refusals to provide any responses to FMA’s jurisdictional discovery
 11 requests are a meritless delay tactic designed to prevent Defendants from receiving any discovery
 12 prior to service of Plaintiffs’ opposition to Defendants’ Motions to Dismiss or Transfer. FMA
 13 requests that the Court order Plaintiffs to immediately provide substantive answers to Defendants’
 14 interrogatories and RFAs, and begin rolling production of documents responsive to its RFPs on
 15 May 1, with completion of rolling production on May 8. FMA reserves the right to request
 16 additional relief once the full scope of the prejudice it has suffered (by the time it ultimately
 17 receives the requested jurisdictional discovery) becomes apparent.

18
 19
 20 **III. PLAINTIFFS’ GENERAL CONTENTIONS AND POINTS OF AUTHORITY**

21 Plaintiffs Nanya Technology Corporation (“NTC”) and Nanya Technology
 22 Corporation USA (“NTC USA”) raise the following general contentions and points of authority
 23 with respect to each of FMA’s discovery requests:

- 24 • **FMA is not entitled to jurisdictional discovery.** As previously briefed to this
 25 Court, a *plaintiff* in a patent infringement suit may be entitled to engage in
 26 jurisdictional discovery in opposition to a defendant’s motion to dismiss for lack of
 personal jurisdiction. *Commissariat a L'Energie Atomique v. Chi Mei*
Optoelectronics Corp., 395 F.3d 1315, 1323 (Fed. Cir. 2005). This right, however,
 does not extend to the defendant challenging jurisdiction. *See id.* Thus, the
 Stipulation under which Plaintiffs are currently carrying out their jurisdictional

discovery is predictably silent as to FMA's right to initiate jurisdictional discovery. (Ex. M, Stipulation, Dkt. No. 148, at 2). Under the Discovery Plan, a party that wishes to modify the limitations on discovery must apply to the Court for such relief. (Ex. N, Discovery Plan, Dkt. No. 171, at 2). Therefore, because FMA has not sought leave from the Court to allow it to engage in jurisdictional discovery, any discovery requests served by FMA at this time are improper.

- **The Discovery Plan does not allow FMA to circumvent L.R. 26.2.** Even if FMA were entitled to jurisdictional discovery, its requests are premature because FMA has not yet filed its L.R. 26.2 pre-discovery disclosures. Contrary to FMA's contention, the mere fact that the Discovery Plan extended FMA's deadline to serve preliminary disclosures does not allow it to initiate discovery without first making the required disclosures. *Id.* The Discovery Plan does not supersede the Local or Federal Rules, and under the Local and Federal Rules, FMA cannot serve any discovery requests until it has served its initial disclosures. *See* L.R. 1.1, 26.2; *see also* FED. R. CIV. P. 1, 26(a).

Despite FMA's refusal to comply with federal law, the agreed Stipulation, the Discovery Plan, and L.R. 26.2, Plaintiffs propose that they will provide substantive responses to FMA's discovery requests within 10 days of receiving FMA's L.R. 26.2 disclosures.

IV. THE PARTIES' SPECIFIC CONTENTIONS AND POINTS OF AUTHORITY

A. FMA'S INTERROGATORIES TO NTC AND NTC USA

INTERROGATORY NO. 1: Separately for each alleged basis of jurisdiction over FMA under Section 12 of the Clayton Act (a) state each such basis of jurisdiction; (b) state each fact supporting each basis; and (c) for each fact, identify all evidence supporting that fact.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Interrogatory No. 1:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal

common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).

- Plaintiffs object to this request because it seeks information not relevant to the jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, part (c) of the request seeks discovery of information related to the merits of this case, and Plaintiffs are not required to respond to merits-discovery requests until thirty days after the hearing on Defendants’ pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs’ possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of Plaintiffs’ jurisdictional discovery requests to which Defendants have failed to fully respond.

INTERROGATORY NO. 2: Separately for each alleged basis of jurisdiction over Fujitsu under Section 12 of the Clayton Act (a) state each such basis of jurisdiction; (b) state each fact supporting each basis; and (c) for each fact, identify all evidence supporting that fact.

1. FMA’s Position

See supra section II (FMA’S General Contentions and Points of Authority).

2. Plaintiffs’ Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Interrogatory No. 2:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs’ Response, which according to the Court’s February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).
- Plaintiffs object to this request because it seeks information not relevant to the jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, part (c) of the request seeks discovery of information related to the merits of this case, and Plaintiffs are not required to respond to merits-discovery requests until thirty days after the hearing on Defendants’ pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs’ possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information

responsive to this request is the product of Plaintiffs' jurisdictional discovery requests to which Defendants have failed to fully respond.

INTERROGATORY NO. 3

Separately for each alleged basis of jurisdiction over FMA not under Section 12 of the Clayton Act (a) state each such basis of jurisdiction; (b) state each fact supporting each basis; and (c) for each fact, identify all evidence supporting that fact.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Interrogatory No. 3:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal law....").
- Plaintiffs object to this request because it seeks information not relevant to the jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, part (c) of the request seeks discovery of information related to the merits of this case, and Plaintiffs are not required to respond to merits-discovery requests until thirty days after the hearing on Defendants' pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of Plaintiffs' jurisdictional discovery requests to which Defendants have failed to fully respond.

INTERROGATORY NO. 4

Separately for each alleged basis of jurisdiction over Fujitsu not under Section 12 of the Clayton Act (a) state each such basis of jurisdiction; (b) state each fact supporting each basis; and (c) for each fact, identify all evidence supporting that fact.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Interrogatory No. 4:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal law....").
- Plaintiffs object to this request because it seeks information not relevant to the jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, part (c) of the request seeks discovery of information related to the merits of this case, and Plaintiffs are not required to respond to merits-discovery requests until thirty days after the hearing on Defendants' pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of Plaintiffs' jurisdictional discovery requests to which Defendants have failed to fully respond.

INTERROGATORY NO. 5

Separately for each product that you assert to be a contact with Guam out of which your claim for infringement arises against Fujitsu under a stream of commerce theory of specific jurisdiction, and for each product identified in your Second Sets of Jurisdictional requests for Production to Defendants Fujitsu and FMA, dated February 9, 2007: (a) state each basis for alleging infringement against Fujitsu; (b) state each fact supporting each basis; and (c) for each fact, identify all evidence supporting that fact.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Interrogatory No. 5:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal

common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).

- Plaintiffs object to this request because it seeks information not relevant to the jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, part (c) of the request seeks discovery of information related to the merits of this case, and Plaintiffs are not required to respond to merits-discovery requests until thirty days after the hearing on Defendants’ pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs’ possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of Plaintiffs’ jurisdictional discovery requests to which Defendants have failed to fully respond.

INTERROGATORY NO. 6

Separately for each product that you assert to be a contact with Guam out of which your claim for infringement arises against FMA under a stream of commerce theory of specific jurisdiction, and for each product identified in your Second Sets of Jurisdictional requests for Production to Defendants Fujitsu and FMA, dated February 9, 2007: (a) state each basis for alleging infringement against FMA; (b) state each fact supporting each basis; and (c) for each fact, identify all evidence supporting that fact.

1. FMA’s Position

See supra section II (FMA’S General Contentions and Points of Authority).

2. Plaintiffs’ Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Interrogatory No. 6:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs’ Response, which according to the Court’s February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).
- Plaintiffs object to this request because it seeks information not relevant to the jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, part (c) of the request seeks discovery of information related to the merits of this case, and Plaintiffs are not required to respond to merits-discovery requests until thirty days after the hearing on Defendants’ pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at 2).

- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of Plaintiffs' jurisdictional discovery requests to which Defendants have failed to fully respond.

B. FMA'S REQUESTS FOR PRODUCTION TO NTC AND NTC USA

REQUEST FOR PRODUCTION NO. 1:

All documents, electronically stored information, and things demonstrating, showing or otherwise relating to the allegation that Fujitsu Limited owns and/or controls the following entities:

- (a) Fujitsu Computing Products of America;
- (b) Fujitsu General New Zealand Limited;
- (c) Fujitsu Ten; and
- (d) Any other person or company you believe is a subsidiary or affiliate of Fujitsu Limited, whose conduct or actions are relevant to personal jurisdiction over Fujitsu Limited in this proceeding.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Request for Production No. 1:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal law....").
- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

REQUEST FOR PRODUCTION NO. 2:

All purchase orders, receipts, bills of lading, and other documents, electronically stored

information, and things demonstrating, showing or otherwise relating to products manufactured, sold or distributed by Fujitsu Limited, its alleged subsidiaries, or its alleged affiliates in the Territory of Guam.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Request for Production No. 2:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal law....").
- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

REQUEST FOR PRODUCTION NO. 3:

All purchase orders, receipts, bills of lading and other documents, electronically stored information, and things demonstrating, showing or otherwise relating to your allegations that products manufactured or distributed by Fujitsu Limited, its alleged subsidiaries, or its alleged affiliates have been sold or offered for sale in the Territory of Guam, whether alone or combined with other products.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Request for Production No. 3:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal law....").
- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs' possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

REQUEST FOR PRODUCTION NO. 4:

All documents, electronically stored information, and things demonstrating, showing or otherwise relating to your allegation in Paragraph 12 of your First Amended Complaint that Fujitsu Limited and FMA "each have sufficient contacts with the forum to satisfy federal personal jurisdiction requirements.

1. FMA's Position

See supra section II (FMA'S General Contentions and Points of Authority).

2. Plaintiffs' Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Request for Production No. 4:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal law....").

- 1 • Plaintiffs object to this request because it seeks information that is equally available to
2 FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478,
3 *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own
4 business records.
- 5 • Plaintiffs further object to this request because it seeks information that is not in Plaintiffs'
6 possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information
7 responsive to this request is the product of jurisdictional discovery that Defendants have yet
8 to fully yield.

9 **REQUEST FOR PRODUCTION NO. 5:**

10 All documents, electronically stored information, and things demonstrating, showing or
11 otherwise relating to your allegation in Paragraph 15 of your First Amended Complaint that
12 allegedly anticompetitive acts have artificially increased the cost of DDR SDRAM chips in the
13 United States and its territories, including the Territory of Guam.

14 **1. FMA's Position**

15 *See supra* section II (FMA'S General Contentions and Points of Authority).

16 **2. Plaintiffs' Specific Contentions and Points of Authority**

17 In addition to their General Contentions and Points of Authority, Plaintiffs make the
18 following specific objections to Request for Production No. 5:

- 19 • Plaintiffs object to this request as premature because it seeks information that is the subject
20 of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due
21 until May 15, 2007, and which is presently covered by the work product privilege. *See*
22 FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal
23 common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*,
24 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal
25 law....").
- 26 • Plaintiffs object to this request because it seeks information not relevant to the
jurisdictional issues before the Court. FED. R. CIV. P. 26(b)(1). Specifically, the request
seeks discovery of information relevant to the merits of this case, and Plaintiffs are not
required to respond to merits-discovery requests until thirty days after the hearing on
Defendants' pending motions to dismiss or transfer. (Ex. M, Stipulation, Dkt. No. 148, at
2).

27 **REQUEST FOR PRODUCTION NO. 6:**

28 All purchase orders, receipts, bills of lading, and other documents, electronically stored
29 information, and things demonstrating, showing or otherwise relating to your allegation in
Paragraph 16 of your First Amended Complaint that Fujitsu Limited, its alleged subsidiaries, or its
alleged affiliates distribute Accused Fujitsu Products in the Territory of Guam.

1 **1. FMA's Position**

2 *See supra* section II (FMA'S General Contentions and Points of Authority).

3 **2. Plaintiffs' Specific Contentions and Points of Authority**

4 In addition to their General Contentions and Points of Authority, Plaintiffs make the
5 following specific objections to Request for Production No. 6:

- 6 • Plaintiffs object to this request as premature because it seeks information that is the subject
7 of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due
8 until May 15, 2007, and which is presently covered by the work product privilege. *See*
9 FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal
10 common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*,
11 491 U.S. 554, 562 (1989) ("We have recognized the attorney-client privilege under federal
12 law....").
- 13 • Plaintiffs object to this request because it seeks information that is equally available to
14 FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478,
15 *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own
16 business records.
- 17 • Plaintiffs further object to this request because it seeks information that is not in Plaintiffs'
18 possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information
19 responsive to this request is the product of jurisdictional discovery that Defendants have yet
20 to fully yield.

21 **REQUEST FOR PRODUCTION NO. 7:**

22 All documents, electronically stored information, and things demonstrating, showing, or
23 otherwise relating to your allegation in Paragraph 17 of your First Amended Complaint that
24 "Fujitsu, Ltd. Its subsidiaries, or its affiliates place" Accused Fujitsu Products "in the stream of
25 commerce with the intention that they would be available to people in the United States and the
26 Territory of Guam."

21 **1. FMA's Position**

22 *See supra* section II (FMA'S General Contentions and Points of Authority).

23 **2. Plaintiffs' Specific Contentions and Points of Authority**

24 In addition to their General Contentions and Points of Authority, Plaintiffs make the
25 following specific objections to Request for Production No. 7:

- 26 • Plaintiffs object to this request as premature because it seeks information that is the subject
of Plaintiffs' Response, which according to the Court's February 26, 2007 Order, is not due
until May 15, 2007, and which is presently covered by the work product privilege. *See*

FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).

- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs’ possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

REQUEST FOR PRODUCTION NO. 8:

All documents, electronically stores information, and things demonstrating, showing, or otherwise relating to your allegation in Paragraph 17 of your First Amended Complaint of “products that are placed into the stream of commerce by Fujitsu Ltd., its subsidiaries, or its affiliates.”

1. FMA’s Position

See supra section II (FMA’S General Contentions and Points of Authority).

2. Plaintiffs’ Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Request for Production No. 8:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs’ Response, which according to the Court’s February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).
- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs’ possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

REQUEST FOR PRODUCTION NO. 9:

All documents, electronically stores information, and things demonstrating, showing, or otherwise relating to your allegation in Paragraph 18 of your First Amended Complaint that Accused Fujitsu Products are made “with the intention that they would be used in a significant number of consumer products sold in the United States and the Territory of Guam.”

1. FMA’s Position

See supra section II (FMA’S General Contentions and Points of Authority).

2. Plaintiffs’ Specific Contentions and Points of Authority

In addition to their General Contentions and Points of Authority, Plaintiffs make the following specific objections to Request for Production No. 9:

- Plaintiffs object to this request as premature because it seeks information that is the subject of Plaintiffs’ Response, which according to the Court’s February 26, 2007 Order, is not due until May 15, 2007, and which is presently covered by the work product privilege. *See* FED. R. CIV. P. 26(b)(1); FED. R. EVID. 501 (authorizing federal courts to develop federal common law on both attorney-client and attorney work product privileges); *U.S. v. Zolin*, 491 U.S. 554, 562 (1989) (“We have recognized the attorney-client privilege under federal law....”).
- Plaintiffs object to this request because it seeks information that is equally available to FMA. *McColm v. Housing Auth.*, No. C-02-5810 PJH (JCS), 2007 U.S. Dist. LEXIS 8478, *6-7 (N.D. Cal. 2007). Specifically, FMA may obtain this information from its own business records.
- Plaintiffs further object to this request because it seeks information that is not in Plaintiffs’ possession or control. FED. R. CIV. P. 26(a)(1)(B). Specifically, any information responsive to this request is the product of jurisdictional discovery that Defendants have yet to fully yield.

REQUEST FOR PRODUCTION NO. 10:

All documents, electronically stored information, and things demonstrating, showing or otherwise relating to your allegation in Paragraph 19 of your First Amended Complaint that Fujitsu Limited “distributes products manufactured by Fujitsu companies to businesses and legal residents of the Territory of Guam.”

1. FMA’s Position

See supra section II (FMA’S General Contentions and Points of Authority).